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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/790,752

03/03/2004

Jason E. Zirk

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2886

7590

08/16/2005

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EXAMINER

MAKIYA, DAVID J

ART UNIT

PAPER NUMBER

2875

DATE MAILED: 08/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/790,752

Applicant(s)

ZIRK ET AL.

Examiner

David J. Makiya

Art Unit

2875

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 March 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>3/3/04</u> . | 6) <input type="checkbox"/> Other: ____  |

## DETAILED ACTION

### *Drawings*

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: 330 in Figure 21. The reference character will be interpreted as a “digging tool 330” similar to the previously disclosed “digging tool 30.”

The drawings are also objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: cap 473 on Page 18, Line 13.

The drawings are also objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: curved section 21.

The drawings are also objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character “21” has been used to designate both a curved section (Page 12, Line 16) and an opening (Page 12, Line 18).

The drawings are also objected to as failing to comply with 37 CFR 1.84(p)(4) because reference characters “190” and “12” have both been used to designate the same object in Figure 12. There are no distinguishing lines or characteristics in the figure to distinguish the body from the knife and vice versa.

The drawings are also objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character “74” has been used to designate both a rotational pin (Page 5, Line 13) and a hatchet body (Page 13, Line 6).

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

#### *Specification*

The disclosure is objected to because of the following informalities: the word "inadverttealt" on Page 9, Line 16. The word "inadverttealt" will be interpreted to mean "inadvertent." On Page 19, Line 27, the word "abovedisclosed" will be interpreted to mean "disclosed."

Appropriate correction is required.

#### *Claim Objections*

Claim 10 is objected to because of the following informalities: the claim is improperly said to be dependent upon claim 11. For examination purposes, the first line on claim 10 will be read as "The multi-tool device as set forth in claim 9...." Appropriate correction is required.

Claim 12 is objected to because of the following informalities: the word "the" on Line 3 of claim 12 should be "to." Appropriate correction is required.

Claims 17 and 19 are objected to because of the following informalities: the word "withing" is not a properly spelled word. For examination purposes, "withing" will be interpreted as "within." Appropriate correction is required.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 6-10, 13, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gardiner et al. (US Pub. No. US 2004/0016058) in view of Spencer-Foote (US Patent 3,837,023).

With respect to claim 1, Gardiner et al. teaches a multi-tool device comprising a single housing 12 where the housing comprises a plurality of compartments (not numbered within Figure 6), a plurality of tools 106 being rotatably mounted in a first compartment of the housing at a first end of the housing and a flashlight 22 disposed in a second compartment of the housing at a second end of said housing distal to the first end. However, Gardiner et al. does not teach a hatchet having a body including cutting edge on one end and a hammerhead on a distal end with the hatchet being one of the tools mounted within the housing. Spencer-Foote teaches a hatchet 40 having a body including a cutting edge 54 on one end and a hammerhead 58 on a distal end with the hatchet. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Gardiner et al. with the teachings of Spencer-Foote because adding a hatchet provides a more effective way of cutting larger objects.

With respect to claim 6, Gardiner et al. further teaches the multi-tool device comprising a knife 128 disposed in a third compartment of the housing at the second end of the housing and on an opposite side of the housing from the flashlight.

With respect to claim 7, Gardiner et al. further teaches the multi-tool device comprising a saw 123 disposed in a third compartment of the housing at the second end of the housing and on an opposite side of the housing from the flashlight.

With respect to claim 8, Gardiner et al. teaches the multi-tool device comprising a saw disposed in a fourth compartment of the housing at the second end of the housing and adjacent to the knife.

With respect to claim 9, Gardiner et al. teaches the multi-tool device comprising a compass 172 disposed in a third compartment of the housing at a position between the first and second ends of the housing and on a same side of the housing as the flashlight.

With respect to claim 10, Gardiner et al. teaches the multi-tool device wherein the third compartment being a storage compartment 21 and the compass forming a lid for the storage compartment.

With respect to claim 13, Spencer-Foote further teaches the body of the hatchet comprising a storage compartment 66.

With respect to claim 16, Gardiner et al. further teaches a multi-tool device comprising a single housing 12 and the housing comprising an elongated body having a plurality of compartments, at least one cutting tool removably mounted in a first compartment of the housing and a flashlight disposed in a second compartment of the housing.

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Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gardiner et al. and Spencer-Foote as applied to claim 1 above, and further in view of Mazzo (US Patent 5,103,520).

Gardiner et al. in view of Spencer-Foote teaches the multi-tool device discussed above. Spencer-Foote further teaches a digging tool 92 mounted within the body of the hatchet but does not disclose the digging tool being rotatably mounted on the body of the hatchet. Mazzo teaches a multipurpose tool that has a digging tool 19' rotatably mounted on the body. It would have been obvious to one of ordinary skill in the art to modify the hatchet with the teachings of Mazzo because modifying the mounting of the tool from internally to rotatably mounted provides quicker access to the digging tool.

Claims 3-5, 12, 14-15, and 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gardiner et al. and Spencer-Foote as applied to claims 1 and 16 above, and further in view of Gibbs (US Patent 4,805,303).

With respect to claim 3, Gardiner et al. in view of Spencer-Foote and Mazzo teaches the invention disclosed above where the hatchet is always in an open position at 90 degrees. However, the teachings do not provide a multi-tool with a first and second locking button that allows the hatchet to rotate from a closed position to an open position at 90 degrees. Gibbs teaches a multi-tool device 10 further comprising a first locking button 48 and a second locking button 50, each being disposed at the first end of the housing, the first locking button locking said hatchet 14 in a closed position in the first compartment, and when pressed by a user, releases the hatchet to allow the user to rotate the hatchet and rotatably extract the cutting edge from the first compartment and the second locking button locking the hatchet in an open position (Figure 1). It would have been obvious to one of ordinary skill in the art at the time of the

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invention to improve the hatchet with the teachings of Gibbs because locking the hatchet prevents the device from closing during use and preventing accidental cutting.

With respect to claim 4, Spencer-Foote further teaches the multi-tool device comprising a digging tool mounted on the body of the hatchet and the digging tool being limited to a 90 degree rotation with respect to the body of the hatchet by the body of the hatchet (Figure 6).

With respect to claim 5, Spencer-Foote further teaches the multi-tool device comprising a digging tool mounted on the body of the hatchet and the digging tool being limited to a 90 degree rotation with respect to the body of the hatchet by the hammer head (Figure 6).

With respect to claim 12, Gardiner et al. in view of Spencer-Foote teaches the invention disclosed above, but fails to teach the device having a structural support frame. Gibbs further teaches the multi-tool device wherein the housing (26 and 28) comprises a structural support frame (32 and 34) to which the hatchet is rotatably mounted and the structural support frame adding structural strength to the housing. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the device with the teachings of Gibbs because adding a structural support frame allows for the body of the device to be rigidly supported while the housing can have an aesthetically pleasing appearance.

With respect to claim 14, Gibbs teaches the multi-tool device wherein the body of the hatchet comprising a plurality of serrated teeth and a hooked portion 18 (Column 3, Line 17) for enabling the hatchet to be hooked over and grapple a tree limb for hanging the multi-tool device from the tree limb.

With respect to claim 15, Spencer-Foote further teaches the multi-tool device comprising a pulley (66 and 98) mounted on the hatchet, however it does not teach the pulley to be at a



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position between the first and second ends of the housing for hoisting items when the hatchet is grappled to the tree limb. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the location of the pulley because the pulley is less likely to interfere with the hatchet if it is mounted on the housing.

With respect to claim 17, Gardiner et al. in view of Spencer-Foote in further view of Gibbs teaches the multi-tool device as described above where the tool has a structural support frame disposed within the elongated body of the housing and adding structural strength to the housings, a hatchet having a body including a cutting edge on one end and a hammer head on a distal end and the hatchet being rotatably mounted to the structural support frame about a pivot point and the hatchet being disposed within a third compartment, and a digging tool rotatably mounted on the body of the hatchet about the pivot point, and the digging tool overlaying the third compartment.

With respect to claim 18, Gardiner et al. in view of Spencer-Foote in further view of Gibbs teaches the multi-tool device as described above where the tool has a first locking button and a second locking button with each being disposed at the first end of the housing, the first locking button locking said hatchet in a closed position in the first compartment and when pressed by a user, releases the hatchet to allow the user to rotate the hatchet and rotatably extract the cutting from the first compartment and the second locking button locking the hatchet in an open position when the hatchet is rotated 90 degrees.

With respect to claim 19, Gardiner et al. in view of Spencer-Foote in further view of Gibbs teaches the multi-tool device as described above where the tool has a single housing with the housing comprising an elongated body having a plurality of compartments, a structural

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support frame disposed within the elongated body of the housing and adding structural strength to the housing, a hatchet having a body including a cutting edge on one end and a hammer head on a distal end with the hatchet being rotatably mounted to the structural support frame about a pivot point and the hatchet being disposed within a first compartment of the housing at a first end of the housing, a digging tool rotatably mounted on the body of the hatchet about the pivot point and the digging tool overlaying the first compartment and a cutting tool removably mounted in a second compartment of the housing at a second end of the housing distal to the first end.

With respect to claim 20, Gardiner et al. further teaches the multi-tool device comprising a flashlight disposed in a third compartment of the housing at the second end of the housing and on an opposite of the housing from the cutting tool.

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gardiner et al. in view of Spencer-Foote as applied to claim 1 above, and further in view of Herlbauer (US Patent 1,899,868).

With respect to claim 11, Gardiner et al. in view of Spencer-Foote teaches the invention disclosed above. However, it does not teach a multi-tool wherein the flashlight has a rotatable head and interchangeable lens. Herlbauer teaches a flashlight having a rotatable head 18 and interchangeable lens 23 (Lines 77-82). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the flashlight with the teachings of Herlbauer because a rotatable head allows for illumination in multiple directions and an interchangeable head allows for easy replacement of a burnt light bulb.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Lin (US Patent 6,454,430) teaches an emergency hammer pivotally connected to a flashlight and a blade. Kershaw et al. (US Patent 6,006,385) teaches a multi-tool with foldable tools stored within such as a knife that can have an open position at 90 degrees. Eagan et al. (US Patent 1,596,602) teaches a combination tool with a hatchet on one end and a hammer head on the other. Shandel (US Patent 5,297,306) teaches a combination outdoor tool with devices such as an axe, hammer, digging tool, and saw blade. Taggart et al. (US Patent 6,273,582) teaches a multi-tool with a combination including a flashlight and blades.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J. Makiya whose telephone number is (571) 272-2273. The examiner can normally be reached on Monday-Friday 7:30am - 4:00pm (ET).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Renee Luebke can be reached on (571) 272-2009. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
RENEE LUEBKE  
PRIMARY EXAMINER